

1 Adam I. Gafni, Cal. Bar No. 230045
2 LAW OFFICES OF ADAM I. GAFNI
2811 Wilshire Blvd., Suite 780
3 Santa Monica, California 90403
3 Tel: (424) 744-8344
4 Fax: (424) 488-1344
4 E-mail: adam@gafnilaw.com

5 Attorneys for Plaintiff, VINCENT K. TYLOR

6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

8
9 VINCENT K. TYLOR,

10 Plaintiff,

11 v.

12 DLS TRANSPORTATION INC., a
13 California Corporation; AMERIGO
13 NAAMI; and DOES 1 through 10

14 Defendants.

15
16 **Case No.: 8:15-cv-00957**

17 Assigned to the Honorable Josephine L.
18 Staton

19
20 **JOINT STATUS REPORT OF**
21 **PLAINTIFF AND DEFENDANTS**
22 **PURSUANT TO RULE 26(f) AND**
23 **THIS COURT'S ORDER**

24
25 **Conference Hearing Date: 12/4/2015**
26 **Time: 1:30 p.m.**

27
28 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

29 Pursuant to Federal Rule of Civil Procedure 26(f) and this Court's Order Requiring
30 Joint Status Report, Plaintiff, VINCENT KHOURY TYLOR ("Plaintiff") and
31 Defendant DLS TRANSPORTATION INC. and Defendant AMERIGO NAAMI,
32 ("collectively Defendants") jointly submit this Status Report.

33
34
35 **JOINT STATUS REPORT OF PLAINTIFF AND DEFENDANTS PURSUANT TO RULE**
36 **26(f) AND THIS COURT'S ORDER**

I.

RULE 26(f) REQUIREMENTS

(Per Rule 26(f) and this Court's Order Requiring Joint Status Report)

A. Statement of the Case:

Plaintiff's Position: This is a copyright infringement action brought by Plaintiff, Vincent Khoury Tylor, a well-known photographer of Hawaiian landscapes, who discovered that DLS Transportation was using his copyrighted Photograph on their commercial website. The Photograph was being used by Defendants to advertise on their website, generating sales, and profits. Plaintiff's image was registered at the time of infringement commencing.

Plaintiff attempted to avoid this lawsuit by sending multiple notices to DLS Transportation and NAAMI, to no avail. By letter dated November 7, 2013, Plaintiff gave notice to Defendants together with a demand to cease and desist the unlawful use of Plaintiff's copyrighted images on its website <http://www.dlsaviation.com>. Nevertheless, the infringing image remained on Defendants' website, available on multiple links. By letter dated April 23, 2014, Plaintiff sent another notice to Defendant together with a demand to cease and desist the unlawful use of his Photograph. The links were not removed. To date, despite even further communications, and discussions with Defendants' counsel, one of the links remains active at:

http://dlsaviation.com/images_banner/hawaii_beach.jpg, as of the drafting of this report (11/6/2015) nearly two years after first putting Defendant on notice of its infringing use. No offer of settlement was been forthcoming and, as such, Plaintiff was left with little choice but to file the instant lawsuit for direct and willful copyright infringement.

1 Defendant's Position:

2 Defendants deny the allegations of Plaintiff's Complaint, deny that there has
3 been any infringement of Plaintiff's rights, and deny that Plaintiff has been
4 damaged in any way as a result of the acts and/or omissions of Defendants.
5 Defendants further claim that Plaintiff's allegations relate to conduct of third-
6 parties over which Defendants had and have no control.

7

8 **B. Subject Matter Jurisdiction:**

9 This action arises under the provision of the Copyright Act of the United
10 States, as amended, 17 U.S.C. § 101 et. seq., and is for infringement of copyrights
11 registered in the Copyright Office of the United States. Therefore, this court has
12 jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 and §
13 1338(a).

14 **C. Legal Issues:**

15 This is a copyright infringement case. Plaintiff believes that the key legal
16 issues are the ownership of the copyrights in question, the date of registration of the
17 copyrighted images, damages, the extent of Defendants' infringing activity,
18 knowledge of the contributing actions to the infringing activity, and the ability to
19 control said activity and derive a direct financial benefit therefrom. Defendants
20 believe that the key legal issues include those identified by Plaintiff, as well as the
21 validity and enforceability of the purported copyrights, Plaintiff's standing to assert
22 the purported copyrights, whether any infringement has occurred, and the extent of
23 Plaintiff's harm or damages, if any.

24 **D. Damages:**

25 Plaintiff is seeking damages for willful direct and secondary copyright
26 infringement up to the statutory maximum of \$150,000.00.

1 **E. Insurance:**

2 Defendants have tendered the defense to the insurance carrier and have not
3 received any confirmation of a defense and/or reservation of rights at this
4 time.

5 **F. Motions:**

6 Plaintiff intends to file a motion for summary judgment as to liability.
7 Defendants also anticipate filing a motion for summary judgment as to liability.

8 **G. Manual for Complex Litigation:**

9 The parties do not contend that this action will require compliance with
10 procedures of the Manual for Complex Litigation.

11 **H. Status of Discovery:**

12 Discovery has not yet commenced.

13 **I. Discovery Plan:**

14 The parties' preliminary assessment is that discovery may be required on, but
15 not limited to:

- 16 a) The allegations in the complaint and any responsive documents;
- 17 b) Evidence of the copyrights allegedly infringed;
- 18 c) Defendants response to notice of infringement;
- 19 d) Use and display of the infringing image before and after notice;
- 20 e) The allegations in the Answer;
- 21 f) All affirmative defenses raised in the Answer;
- 22 g) Factors related to damages, including but not limited to statutory damages;
- 23 h) Profits derived from the defendant's business, web site, and use and display
24 of the infringing image and other images on its site;
- 25 i) Identity of the creators of Defendant's commercial website and involvement
26 of any personnel;

- 1 j) Information related to visits by others to website (including Defendant's
- 2 personnel and counsel;)
- 3 k) All data related to the subject image, which was and/or is stored on
- 4 Defendant's servers and/or in Defendant's possession, including but not limited to
- 5 all data that shows who viewed the image and when through both websites;
- 6 l) All allegations of the Complaint;
- 7 m) Plaintiff's authorship and/or ownership of the work(s) of art in dispute;
- 8 n) Plaintiff's standing to assert copyright infringement;
- 9 o) The registration of the copyrights covering the work(s) of art in dispute;
- 10 p) All data related to the work(s) of art in dispute including, but not limited to,
- 11 the date, location, manner, and participation in the creation of the work(s) of art that
- 12 are in dispute;
- 13 q) Plaintiff's allegedly incurred harm or damages, if any; and,
- 14 r) Plaintiff's practices related to the authorization of use or licensing of the
- 15 work(s) of art in dispute.

16 The parties reserve the right to object to such discovery and to expand the
17 scope of discovery as the case progresses.

18 At this time, the parties anticipate the possibility of designating experts.
19 Should the parties intend to retain any testifying experts, all mandatory disclosures
20 for such experts, shall be made as follows: at the time as set forth in section "P"
21 below in the chart provided by the Court in the Court's Scheduling Order. Any
22 rebuttal reports must be served within 20 days of service of the original reports.

23 In compliance with Rule 26(a)(2), expert disclosures will include all
24 information required under Rule 26(a)(2)(A)-(B).

25 **J. Discovery Cut-off:**

1 Plaintiff requests a discovery cut-off of April 12, 2016 based upon the trial
2 date of September 6, 2016 per Court order. Defendants' counsel has preset trial
3 conflicts throughout September 2016 and the first week of October 2016 and, thus,
4 requests a discovery cut-off of May 17, 2016, based on a trial date of October 11,
5 2016. See section P, below.

6 **K. Dispositive Motions:**

7 All parties anticipate filing motions for summary judgment. All parties agree
8 that hearings on these motions will be held no later than the times as set forth in
9 section "P" below in the chart provided by the Court in the Court's Scheduling
10 Order. Moving and responding papers will be filed in accordance with L.R. 6.1, 7.9,
11 and 7.10.

12 **L. Settlement:**

13 Plaintiff's Position: A monetary demand has been made by Plaintiff
14 accounting for license fees, the length of use and multiplier due the need for
15 deterrence, absence of license, and continuing use even post-suit, but no offer
16 whatsoever has ever been made by Defendants.

17 Plaintiff agrees to a settlement conference and believes that an early
18 settlement conference would be beneficial. Plaintiff would be amendable to engage
19 in a settlement conference anytime in January – February 2016 range or thereafter.
20 Defendants have tendered the claim to insurance. The parties select ADR Procedure
21 No. 2 – to mediate via the courts ADR program (neutral panel).

22 **M. Trial Estimate:**

23 The parties estimate that time for trial will be 4 days. The parties have
24 requested a trial by jury. Parties propose the final pretrial conference and
25 conference as set forth in section "P" below in the chart provided by the Court in
26

1 the Court's Scheduling Order. Plaintiff contemplates calling 3-4 number of
 2 witnesses.

3 **N. Trial Counsel:**

4 Plaintiff's trial counsel will be Adam I. Gafni.

5 Defendant's trial counsel will be Stephen Collins and Kevin Isaacson.

6 **O. Independent Expert or Master:**

7 The parties do not believe this is a case in which the Court should consider
 8 appointing a master pursuant to Fed. R. Civ. P. 53, or an independent scientific
 9 expert.

10 **P. Other Issues:**

11 The parties do not currently know of any other issues affecting the status or
 12 management of the case. There are no proposals regarding severance, bifurcation,
 13 or other ordering of proof.

14 **Q. Proposed Schedule of Pretrial And Trial Dates [Pursuant to Court
 15 Order]**

Matter	Weeks Before Trial [Per Court Order]	Plaintiff's Request	Defendants' Request	Court Order
Last Day to File Motions to Add Parties and Amend Pleadings	Scheduling Conference Date plus sixty (60) days	January 26, 2016	January 26, 2016	
Fact Discovery Cut-Off	21	April 12, 2016	May 17, 2016	

1	Last Day to File Motions (Except Daubert and all other Motions in Limine)	19	April 26, 2016	May 31, 2016	
8	Last Day to Serve Rebuttal Expert Reports	15	May 24, 2016	June 28, 2016	
12	Last Day to Conduct Settlement Proceedings	12	June 14, 2016	July 19, 2016	
16	Expert Discovery Cut-Off	11	June 21, 2016	July 26, 2016	
19	Last Day to File Daubert Motions	Expert Discovery Cut-Off Date plus seven (7) days			
24	Last Day to File Motions in Limine	Final Pre-Trial Conference Date less	July 19, 2016	August 19, 2016	

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	(excluding Daubert Motions)	twenty-eight (28) days		
Final Pre-Trial Conference (Friday at 1:30 p.m.)	3	August 16, 2016	September 16, 2016	
Last Day to File Proposed Finding of Facts and Conclusions of Law (if court trial)	1	August 30, 2016	October 4, 2016	
Exhibit Conference (Friday at 3:30 p.m.)	Friday before trial	September 2, 2016	October 7, 2016	
Trial: Jury (Tuesday at 9:00 a.m.)		September 6, 2016	October 11, 2016	

1 Dated: November 17, 2015

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
LAW OFFICES OF ADAM I. GAFNI

By: /s/ Adam I. Gafni
Adam I. Gafni
Attorneys for Plaintiff
Vincent K. Tylor

Dated: November 17, 2015

TINGLEY LAW GROUP, PC

By: /s/ Kevin W. Isaacson
Kevin W. Isaacson
Attorneys for Defendants
DLS Transportation, Inc.
Amerigo Naami